

## **8(A) CONTRACTORS: DON'T FAIL TO PAY YOUR SUBCONTRACTORS**

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A recent decision by the Small Business Administration's ("SBA") Office of Hearings and Appeals ("OHA") sustained the SBA's termination of an 8(a) contractor for failing to pay a subcontractor \$68,688.53, citing this failure as a lack of business integrity. *Corporate Portfolio Management Solutions*, SBA No. BDPT-567, Feb. 15, 2018. OHA noted that the failure to pay the subcontractor, Procon, and failure to comply with either an arbitration agreement or a civil judgment entered against Corporate Portfolio, amounted to conduct indicating a lack of business integrity. Because there was no basis for determining that the SBA's decision was arbitrary, capricious or contrary to law, OHA dismissed Corporate Portfolio's appeal and declined jurisdiction.

By regulation, SBA accepts a business into the 8(a) program for 9 years, so long as the concern maintains its program eligibility. 13 CFR § 124.2. However, SBA may terminate a business's participation in the program at any time for good cause. 13 CFR §§ 124.303 & 124.304. Good cause for an early termination may include "[c]onduct by the [8(a)] concern or any of its principals indicating a lack of business integrity. Such conduct may be demonstrated by information related to...a judgment or settlement in a civil case. *Id.* 13 CFR § 124.303(a)(17).

Corporate Portfolio was a contractor that specialized in data analytics, financial management and information technology. It received a prime 8(a) award from the General Services Administration in 2013 ("GSA"), and hired Procon as a subcontractor to perform work under that contract. As of April 2016, Corporate Portfolio owed Procon \$68,688.53 for work performed under the subcontract, and had failed to pay this obligation. Procon initiated arbitration before the American Arbitration Association, and Corporate Portfolio signed a consent order agreeing to pay Procon \$75,000 in three installments by Feb. 28, 2017. On June 20, 2017, Procon filed a complaint in the DC Superior Court, alleging that no payments had been made. The DC Superior Court entered a civil judgment in favor of Procon and against Corporate Portfolio for \$75,000.

In August, SBA suspended Corporate Portfolio from the 8(a) program due to lack of business integrity, and began proceedings to terminate its 8(a) status. Two months later, SBA terminated Corporate Portfolio as an 8(a), citing lack of business integrity, for failing to comply with the arbitration agreement and DC Superior Court petition.

Corporate Portfolio appealed to OHA and sought to reverse the termination decision. It acknowledged it owed Procon \$68,688.53 for work performed in 2015 under the subcontract, but claimed GSA had delayed making payment to it for four months. Even after receiving payment from GSA, Corporate Portfolio did not pay Procon, diverting the money to unidentified "employee related costs." Such conduct demonstrates a lack of business integrity, said OHA. Further, there were no reasons to conclude that the SBA decision was arbitrary, capricious or contrary to law. Even though Corporate Portfolio had begun to make repayments to Procon, OHA concluded that it had engaged in conduct indicating lack of business integrity when it failed to pay its subcontractor.

OHA concluded there were no facts that would warrant reversal or modification of SBA's decision to terminate Corporate Portfolio, and dismissed its petition appealing that termination.

The takeaway is important: 8(a) Contractors should pay their contractors as required by their contracts and by law. Otherwise, they risk being found to lack business integrity by the SBA.

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